

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed July 13, 2007. Claims 1-31 are pending in this application and Claims 1-31 are rejected. New Claims 32 and 33 have been added. Applicants respectfully request reconsideration and favorable action in this case in view of the following remarks.

Section 103 Rejections

The Office Action rejects Claims 1, 2, 4-10, and 12-15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2004/0179518 A1 issued to Bruckman et al. ("*Bruckman*") in view of U.S. Patent No. 5,629,940 issued to Gaskill ("*Gaskill*"). Claims 3 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bruckman* in view of *Gaskill* as applied to Claims 1 and 8 above, and further in view of U.S. Patent No. 6,625,165 issued to Krishnamoorthy et al. ("*Krishnamoorthy*"). Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bruckman* and in view of U.S. Patent No. 6,694,100 issued to Fatehi et al. ("*Fatehi*"). Claims 31 and 17-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bruckman* in view of *Fatehi* and *Gaskill*. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Bruckman* in view of *Fatehi* and *Gaskill* as applied to Claim 31 above, and further in view of *Krishnamoorthy*. Claims 23, 24, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bruckman* in view of *Fatehi*, *Gaskill*, and U.S. Patent No. 6,130,764 issued to Taniguchi ("*Taniguchi*"). Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Bruckman* in view of *Fatehi*, *Gaskill*, and *Taniguchi* as applied to Claim 23 above, and further in view of *Krishnamoorthy*. Applicants respectfully traverse these rejections for at least the reasons described below.

Claim 1 is allowable at least because the references do not teach or suggest "upgrading a first node in the optical communications ring by increasing a data transmission rate of the first node to an increased rate, the first node coupled to a second node" and "the second node operable to transmit data at the data transmission rate." The Office Action cites Paragraph 75 of *Bruckman* in rejecting this claim, but this is incorrect. *Bruckman* fails to teach or suggest a node that transmits data at a data transmission rate and an upgraded node that transmits data at an increased rate, as required by Claim 1. Instead, *Bruckman* teaches a simultaneous rate increase throughout the network. For example, *Bruckman* teaches

transmitting at an OC-48 rate until all nodes are upgraded, and then simultaneously increasing the network rate to OC-192 for **all nodes**. See *Bruckman*, Paragraphs 10 and 75. In other words, *Bruckman* teaches that all nodes transmit at the **same rate**, regardless of their upgrade status, but does not teach transmitting at an increased rate at one node while another node transmits at the original rate. See *Bruckman*, Paragraphs 11-15.

Further, the Office Action concedes that *Bruckman* does not teach or suggest a node that transmits data at a data transmission rate and an upgraded node that transmits data at an increased rate. For example, Page 3 of the Office Action states “*Bruckman et al.* disclose that while the other nodes are not yet similarly upgraded to a higher rate (i.e., OC-192) and are still operating at the original rate (i.e., OC-48), the **upgraded node transmits data** at a limited capacity **to match the original rate**” (emphasis added). Thus, even the Office Action concedes that the upgraded node in *Bruckman* transmits at the original rate (OC-48), and therefore *Bruckman* fails to teach or suggest “**upgrading a first node** in the optical communications ring **by increasing a data transmission rate of the first node to an increased rate**, the first node coupled to a second node” and “the second node operable to transmit data at the data transmission rate,” as required by Claim 1 (emphasis added).

Claim 1 is also allowable at least because the references do not teach or suggest “transmitting data in a second frame . . . the second frame having a number of second time slots equal to M, wherein M is an integer greater than N and the data occupies a number of the second time slots of the second frame equal to N.” Again, the Office Action argues that Paragraph 75 of *Bruckman* teaches this limitation, but Applicants submit that this argument is flawed. Even assuming for the sake of argument that the STS-48 frame of *Bruckman* has N time slots, and the STS-192 frame has M time slots after the entire network is upgraded to OC-192, *Bruckman* would still fail to teach or suggest occupying N time slots of the upgraded STS-192 frame with data. Indeed, doing so in *Bruckman* would undermine the network upgrade of *Bruckman* to an OC-192 rate. For at least these reasons, Claim 1 is allowable, as are all claims depending therefrom.

Claims 8, 16, 23, and 31 are allowable for analogous reasons. For example, Claim 8 recites “the node operable to transmit a second frame at the higher rate, the second frame having a higher number of time slots than the first frame” and “occupying a number of the time slots of the second frame equal to N using data to be received by at least one of the

existing nodes.” As another example, Claim 16 recites “a bit transmission unit operable to transmit a second frame to an existing node of the optical communications ring at a rate that is higher than the existing rate” and “a switch unit coupled to the bit transmission unit, the switch unit operable to generate a pattern of data that fills a number of the time slots of the second frame equal to N.” As another example, Claim 23 recites “a bit transmission unit operable to transmit a second frame to the first node at a rate that is higher than the existing rate” and “a switch unit coupled to the bit transmission unit, the switch unit operable to generate a pattern of data that fills a number of the time slots of the second frame equal to N.” As yet another example, Claim 31 recites “a bit transmission unit operable to transmit a second frame to an existing node of the optical communications ring at a rate that is higher than the existing rate” and “a switch unit coupled to the bit transmission unit, the switch unit operable to generate a pattern of data that fills a number of the time slots of the second frame equal to N.” As discussed above, *Bruckman* does not teach or suggest these limitations. For at least these reasons, Claims 8, 16, 23, and 31 are allowable.

The dependent claims are allowable based on their dependence on the independent claims and further because they recite numerous additional patentable distinctions over the references. For example, Claim 2 is also allowable at least because the references fail to teach, disclose, or suggest “providing at least one identifier to the second node, the at least one identifier identifying the occupied second time slots of the second frame” and “directing the second node to ignore the at least one identifier.” The Office Action concedes that *Bruckman* does not disclose these limitations and instead relies on Column 2, lines 13-29 and Column 4, lines 32-42 of *Gaskill* to teach these limitations, but this is incorrect. These portions of *Gaskill* describe a pointer packet that conveys information to a receiver 28. See *Gaskill*, Column 4, lines 14-42. Assuming for the sake of argument that the pointer packet teaches the “at least one identifier” (which Applicants do not concede), at no point does *Gaskill* teach or suggest **directing** receiver 28 to **ignore** the pointer packet, as required by Claim 2. Thus, the cited portion certainly does not teach, disclose, or suggest “providing at least one identifier to the second node, the at least one identifier identifying the occupied second time slots of the second frame” and “directing the second node to ignore the at least one identifier.” Claim 10 is allowable for analogous reasons.

For at least the reasons above, Applicants respectfully contend that Claims 1, 8, 16, 23, and 31 are allowable, as are all claims depending therefrom. Reconsideration and favorable action are requested.

New Claims

New Claims 32 and 33 have been added. New Claims 32 and 33 are fully supported by the Drawings and Specification as originally submitted. (see, for example, Page 7, line 10 - Page 8, line 25, Page 14, lines 1-10, and Figures 2 and 5). No new matter has been added. Applicants respectfully contend that Claims 32 and 33 are allowable over the cited references for at least the reasons discussed above.

CONCLUSION

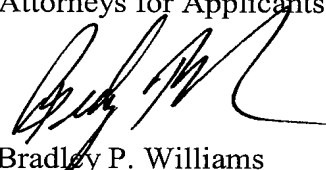
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicants hereby authorize the Commissioner to charge the fee of \$100.00 for adding two extra dependent claims to Deposit Account No. 02-0384 of Baker Botts L.L.P.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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